

13-804. Restitution for offense causing economic loss; fine for reimbursement of public monies

A. Upon a defendant's conviction for an offense causing economic loss to any person, the court, in its sole discretion, may order that all or any portion of the fine imposed be allocated as restitution to be paid by the defendant to any person who suffered an economic loss caused by the defendant's conduct.

B. In ordering restitution for economic loss pursuant to section 13-603, subsection C or subsection A of this section, the court shall consider all losses caused by the criminal offense or offenses for which the defendant has been convicted.

C. The court shall not consider the economic circumstances of the defendant in determining the amount of restitution.

D. Restitution payments that are ordered pursuant to section 13-603 and this section shall not be stayed if the defendant files a notice of appeal, and the payments may be held by the court pending the outcome of an appeal.

E. After the court determines the amount of restitution, the court or a staff member designated by the court, including a probation officer, shall specify the manner in which the restitution is to be paid. In deciding the manner in which the restitution is to be paid, the court or a staff member designated by the court, including a probation officer, shall make reasonable efforts to contact any victim who has requested notice pursuant to sections 13-4415 and 13-4417, shall take into account the views of the victim and shall consider the economic circumstances of the defendant. In considering the economic circumstances of the defendant, the court shall consider all of the defendant's assets and income, including workers' compensation and social security benefits. The court shall make all reasonable efforts to ensure that all persons entitled to restitution pursuant to a court order promptly receive full restitution. The court may enter any reasonable order necessary to accomplish this. If a victim has received reimbursement for the victim's economic loss from an insurance company, a crime victim compensation program funded pursuant to section 41-2407 or any other entity, the court shall order the defendant to pay the restitution to that entity. If a victim has received only partial reimbursement for the victim's economic loss, the court shall order the defendant to pay restitution first to the victim and then to the entity that partially reimbursed the victim. If a probation, parole or community supervision officer has reason to believe that court ordered restitution is not being made, the officer shall report to the court supervising the probationer or the board of executive clemency

that the defendant has failed to make restitution in a timely manner and the court or the board of executive clemency may revoke the defendant's probation, parole or community supervision.

F. If more than one defendant is convicted of the offense which caused the loss, the defendants are jointly and severally liable for the restitution.

G. If the court does not have sufficient evidence to support a finding of the amount of restitution or the manner in which the restitution should be paid, it may conduct a hearing upon the issue according to procedures established by rule of court. The court may call the defendant to testify and to produce information or evidence. The state does not represent persons who have suffered economic loss at the hearing but may present evidence or information relevant to the issue of restitution.

H. After making the determinations in subsection B of this section the trial court shall enter a restitution order for each defendant which sets forth all of the following:

1. The total amount of restitution the defendant owes all persons.
2. The total amount of restitution owed to each person.
3. The manner in which the restitution is to be paid.

I. The restitution order under subsection H of this section may be supported by evidence or information introduced or submitted to the court before sentencing or any evidence previously heard by the judge during the proceedings.

~~J. A restitution lien shall be created in favor of the state for the total amount of the restitution, fine, surcharges, assessments, costs, incarceration costs and fees ordered, if any.~~

~~K.~~ J. Notwithstanding any other law, a restitution lien is created in favor of a victim of the defendant ordered to make restitution. Monies received monthly from the defendant shall be applied first to satisfy the restitution order entered by the court and the payment of any restitution in arrears. Any monies that are owed by this state to a person who is under a restitution order shall be assigned first to discharge the restitution order, including any tax refund that is owed to the defendant.

LK. If the defendant, the state or persons entitled to restitution pursuant to a court order disagree with the manner of payment established in subsection E of this section, the defendant, court or person entitled to restitution may petition the court at any time to change the manner in which the restitution is paid. Before modifying the order pertaining to the manner in which the restitution is paid, the court shall give notice and an opportunity to be heard to the defendant, the state and, upon request, persons entitled to restitution pursuant to a court order.